IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

C.W.P. No.9464 of 2006
Date of decision: 01.12.2006

M/s Sonia Overseas Pvt. Ltd.

-----Petitioner.

Vs.

The Deputy Director, Directorate & another.

-----Respondents.

CORAM:- HON'BLE MR JUSTICE ADARSH KUMAR GOEL
HON'BLE MR JUSTICE RAJESH BINDAL

Present: Mr. Jagmohan Bansal, Advocate
for the petitioner.

Mr. Sanjiv Kaushik, Advocate
for the respondents.

ORDER:

This petition challenges seizure of goods vide seizure memo. dated 18.05.2006 (Annexure P-1) and seeks a direction for release of seized goods.

Case of the petitioner is that the petitioner imported goods for home consumption, of which, clearance was permitted by the proper officer under Section 47 of the Customs Act, 1962.

On 18.05.2006, search was conducted at the premises of the petitioner, on the allegation that the petitioner has mis-declared the value of imported goods in the bill of entry. Raw material and the finished goods lying in the factory were seized. The petitioner was required to execute a sapurdarinama (entrustment-deed). Thereafter, the goods have not been released on the ground that the matter was being inquired into.

Contention raised on behalf of the petitioner is that detention of goods for a long period prejudices the rights of the petitioner pending further proceedings. The goods should be provisionally released on appropriate conditions.

In reply filed, the stand taken is that seizure has been effected on receiving information about under-statement of value of goods and matter was still being inquired into.

We have heard learned counsel for the parties and perused the record.

We are of the view that pendency of proceedings cannot be a ground to retain the goods for an indefinite period. The goods were seized on 18.05.2006 and a period of more than 6 months has already been expired.

Learned counsel for the respondent points out that vide Annexure R-3 and Annexure R-4, order of provisional release of goods has been passed, but the petitioner has not complied with the conditions thereof.

Learned counsel for the petitioner points out that conditions in the order (Annexure R-3) are too stringent inasmuch as the petitioner has been required to furnish bank guarantee of 30% of the value of the seized goods in addition to execution of indemnity bond for the entire value of seized goods, whereas, in identical circumstances, this Court directed furnishing of bank guarantee of the difference of duty paid and duty calculated by taking the value of goods @ $1000 per metric tonnne, after taking into account the tentative valuation as per the stand of the department. The goods in the present case are said to be identical. It is pointed out that the department has subsequently released identical goods by taking the value of goods at the rate of $ 1000 per metric tonne or even less than that.

In view of above, we direct that the goods of the petitioner be provisionally released subject to the petitioner's furnishing bank guarantee equal to the difference in the duty actually paid and duty calculated by taking the price of goods at the rate of $ 1000 per metric tonne. The petitioner will also comply with other conditions mentioned in Annexure R-3, if not already complied with.

The goods will be released within a period of one week from the date of receipt of a copy of this order and furnishing of bank guarantee.

It has further been pointed out by the petitioner that some of the goods seized, are locally procured. This aspect of the matter be looked into at the time of release of the goods and determination of amount of bank guarantee to be furnished. As far as finished goods lying in the factory of the petitioner which were seized, in addition to the amount of bank guarantee mentioned above additional bank guarantee of Rs. One lac shall be furnished.

The writ petition is disposed of accordingly.

(ADARSH KUMAR GOEL)
JUDGE

December 01, 2006
ashwani

(RAJESH BINDAL)
JUDGE